

209 CMR: DIVISION OF BANKS AND LOAN AGENCIES

209 CMR 38.00: DISCLOSURE OF CERTAIN INFORMATION AND TERMS RELATIVE TO THE MORTGAGE APPLICATION AND APPROVAL PROCESS

Section

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38.01: Purpose and Scope

The purpose of 209 CMR 38.00 is to provide prospective mortgage borrowers and applicants with easy to understand information on the residential first mortgage loan application and approval process. 209 CMR 38.00 also provides prospective mortgage borrowers and applicants with information on certain charges and fees that they are likely to incur in obtaining a residential mortgage loan from a first mortgage lender.

In general, this regulation applies to all first mortgage lenders making first mortgage loans on certain residential property located in the Commonwealth.

38.02: Definitions

Commissioner, the Commissioner of Banks.

Date of application, the date upon which a signed mortgage application together with payment of the required application fees are received by the first mortgage lender.

First mortgage lender, any person, including individuals, corporations, associations, partnerships and trusts engaged in the business of making loans secured by first mortgages to finance the acquisition or initial construction of a dwelling or to refinance an existing first mortgage loan on residential property located in the commonwealth of four units or less occupied or to be occupied in whole or in part by the mortgagor.

Mortgage borrower, any applicant(s), either individually or jointly, for a loan to finance the acquisition or initial construction of a dwelling, or for a loan to refinance an existing first mortgage loan by giving to a first mortgage lender an interest in residential property located in the commonwealth of four units or less occupied or to be occupied in whole or in part by the mortgagor.

Prospective Mortgage Borrower, a potential mortgage borrower who has made either an oral or written inquiry to a first mortgage lender on the availability of loans to finance the acquisition or initial construction of a dwelling, or for a loan to refinance an existing first mortgage loan on residential property located in the commonwealth of four units or less occupied or to be occupied in whole or in part by the mortgagor.

Uniform Mortgage Loan Cost Worksheet, the standard form one-page worksheet (hereinafter the "Worksheet"), prepared by the Commissioner and found in 209 CMR 38.04 which permits mortgage borrowers to individually calculate all of the charges and fees that are likely to incur in securing a residential mortgage from a first mortgage lender.

Uniform Mortgage Information Disclosure Statement, the standard form statement prepared by the Commissioner and found in 209 CMR 38.04, entitled "Consumer's Guide to Obtaining a Home Mortgage", which describes the first mortgage loan application and approval process. The statement gives general descriptions of mortgage loan processing time periods, required notices, common mortgage lending terms and practices and other related information.

38.03: Required Disclosures

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(1) A first mortgage lender shall provide, without charge, to a prospective mortgage borrower, a copy of the Uniform Mortgage Information Disclosure Statement, (hereinafter referred to as the "Consumer Guide"), under the following circumstances:

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- (a) At any time prior to the date of application if the prospective mortgage borrower makes a written or oral request for the Consumer Guide; or
- (b) At the same time a first mortgage lender first provides a mortgage loan application form to a prospective mortgage borrower.
- (c) The Consumer Guide does not have to be provided to a prospective mortgage borrower under 209 CMR 38.03(1)(b) if they were previously provided to such borrower under 209 CMR 38.03(1)(a);
- (d) First mortgage lenders are encouraged to advertise, or otherwise inform prospective mortgage borrowers of, the existence and availability of the Consumer Guide found in 209 CMR 38.04.

(2) All first mortgage lenders shall reproduce and maintain on hand sufficient quantities of the Consumer Guide so as to ensure compliance with 209 CMR 38.00. The content of all reproductions of the Consumer Guide shall conform to 209 CMR 38.04. On all reproductions of the Worksheet, first mortgage lenders shall complete the column labeled "Example" and shall insert appropriate information within the brackets found in the Worksheet. A first mortgage lender is not required to complete the columns labeled Loan #1 and Loan #2 on the Worksheet. First mortgage lenders may, at their discretion, employ any reasonable format and graphic design in reproductions of 209 CMR 38.04, provided, however, that the introductory statement "CLOSING AND SETTLEMENT COSTS MAY VARY AMONG MORTGAGE LENDERS. YOU MAY WISH TO COMPARE THESE CHARGES IN CONSIDERING THE TOTAL COST OF YOUR MORTGAGE, found in the Uniform Mortgage Loan Cost Worksheet shall be printed in no smaller than ten-point boldface type. Any such reproductions, however, must clearly and unambiguously convey the required information.

(3) The Disclosures required by 209 CMR 38.00 may be contained in any other document which is substantially similar to the Consumer Guide, includes all the information required by 209 CMR 38.00 and has been approved by the Commissioner. The Worksheet, included as part of the Consumer Guide, shall be an acceptable but not exclusive means of compliance with the loan origination and other fee disclosure provisions of M.G.L. c. 183, § 63.

REGULATORY AUTHORITY

209 CMR 38.00: M.G.L. c. 184, § 17D; St. 1988, c. 20.

38.04: CONSUMER'S GUIDE TO OBTAINING A HOME MORTGAGE

Massachusetts law requires that the Consumer's Guide be provided to you when you obtain a mortgage loan application, or it may be obtained upon request from any lender at any time. It is designed to help you understand the home mortgage application and approval processes and the practices common to mortgage lending in the Commonwealth of Massachusetts. Words and terms in bold print are defined in the Glossary. The lender will also provide a **Real Estate Settlement Procedures Act (RESPA)** Booklet entitled "Settlement Costs"; and, if applicable, the "Consumer Handbook on Adjustable Rate Mortgages" (ARMs). If applicable, a good faith estimate of all costs involved in a mortgage transaction will also be provided by the lender.

Filing a Mortgage Application

As a **borrower**, you will be asked to fill out a mortgage **application**. In order to determine what best suits your needs and circumstances, you should ask questions and carefully study the various types of **mortgages** and options available to you. Two of the most common types of mortgages are **fixed** and **adjustable rate**; a common option is a **rate-lock/interest rate commitment**. You must keep in mind that lending practices vary from **lender** to lender and some terms and procedures may not apply to the refinancing of an existing mortgage.

When filling out an application, it will be helpful for you to have supporting documents and information, such as the signed Purchase and Sale Agreement, account numbers for each of your deposit accounts, information on income, outstanding loans, real estate holdings and any other information the lender may require. An application fee, which is often non-refundable, may be required.

The Mortgage Approval Process

Once the application form has been filled out, the lender will make a decision based upon your creditworthiness and the property's value by considering the following:

Your ability to repay the loan - This is determined by evaluating the information you furnish on your application and verifying your place and length of employment, your deposit accounts and other assets, your income from employment and other sources, and your rental income and expenses, if any.

Your willingness to repay the loan - This is determined by checking your credit history through a credit bureau, your loan references with other creditors, and the history of your residency and mortgage or rental payments.

Whether the value of the property is sufficient to secure the loan - This is determined by obtaining an **appraisal** of the property; by confirming that **loan-to-value ratio** requirements are met; and, in the case of a construction loan, by approving the plans. You may request a copy of the appraiser's report.

In addition, a lender may require that the terms and conditions of the loan satisfy **secondary mortgage market** requirements. As further conditions for approval, the lender may require that you obtain **private mortgage insurance** and **title insurance**. You may also be required to pay your taxes, betterments and/or insurance into an **escrow account**.

When the lender has a completed application, you may be sent a letter offering you a mortgage loan on the terms you requested or on somewhat different terms. The latter is known as a **counter-offer**. If the application is approved and you find the terms of the **commitment letter** acceptable, you must accept those terms in writing. However, the lender may send you a letter denying the mortgage loan. If the application is denied, the lender must give you a specific and accurate reason(s) for denial.

Time Periods for Notices and Disclosures

In general, the overall time period from date of application to **closing** is approximately four to eight

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weeks. Certain other factors, however, may cause delays. During this time several notices and disclosures must be provided to you.

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Within three business days of application, you will be given the **Truth-In-Lending** credit disclosure, and, if applicable, a good faith estimate of **settlement costs** and a book entitled "Settlement Costs".

The lender must inform you of the status of your application no later than 21 business days from the date of application. By that time the lender must either:

- (1) approve or deny your application. In this case, you will be given no further notices on the status of your application; or,
- (2) mail or deliver to you an oral or written statement that your application is not substantially complete and indicate the following: what verification information it requires to make a decision on your application; what information has been received but is not complete; and what information has not yet been received. If you receive this type of notice, then, after the lender receives the missing or incomplete information, you will receive a notice that your application is complete or be informed of the lender's decision on your application. This may be an approval, a denial, or a counter-offer; or,
- (3) give your written notice informing you that your application is substantially complete but that more information may be required by certain third parties. If you are sent this type of notice, you will receive within 30 days a letter informing you of the lender's decision on your application. This may be an approval, a denial, or a counter-offer.

If the application is denied, the **Equal Credit Opportunity Act** requires an **adverse action** notice to be sent within 30 days of a completed application stating a specific and accurate reason(s) for the action taken. A counter-offer that is not accepted by the borrower extends the notice period to 90 days. You will also be notified upon denial as to whether you may appeal the decision to a **Mortgage Review Board**.

Other Notices

Additional notices or disclosures you may receive during the application process are: **Notice of Right of Rescission**, **Urea Formaldehyde Foam Insulation (UFFI) Notice**, and the availability of the appraisal without an additional charge.

The Closing

The closing represents the final step in the mortgage application process. An attorney will do a **title search** on the property, prepare the legal documents necessary for the closing of the loan, and provide you and/or your attorney with the exact **closing costs**. The closing attorney may be hired directly by the lender or the lender may permit you to select the attorney. Massachusetts law requires that you be notified at the time of application that the lender's attorney represents the lender and that you may want to hire your own attorney to represent you. You will, however, most likely have to pay for the services of both lender's attorney and your own attorney.

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GLOSSARY

Adjustable or Variable Rate Mortgage (ARM or VRM) - a mortgage loan in which the interest rate varies in accordance with changes in a specified index, and may result in changed monthly payments. For further information, refer to the "Consumer Handbook on Adjustable Rate Mortgages".

Adverse Action - a denial of a loan in an amount and on terms acceptable to the borrower.

Annual Percentage Rate (APR) - the actual cost of credit to the borrower, including interest and certain other charges, expressed as a yearly rate and calculated over the life of the loan. A guide to compare the cost of loans.

Application - an oral or written request for an extension of credit. Usually a printed form on which the lender collects credit, income and debt information about a prospective borrower, plus facts about the property being used to secure the loan. A fee may be charged at the time of application.

Appraisal - an inspection of the property to assure that its market value exceeds the amount of the loan. A fee may be charged for the appraisal.

Borrower - the person, sometimes referred to as the mortgagor, who obtains a mortgage loan.

Closing - the time and date set for the transfer of the property from seller to buyer and/or for the signing of the loan documents.

Closing or Settlement Costs - fees, in addition to the purchase price of the property, charged at closing which include but are not limited to lawyer's fees, title search and insurance, survey charges and fees to record the deed, mortgage and other documents.

Commitment Letter - a lender's written offer to grant a mortgage loan outlining the terms, the amount of the loan, the interest rate and any other conditions. It can also serve as a communication of the lender's decision on the borrower's application.

Counter-offer - an offer made by the lender to grant credit other than in the amount of terms requested by the applicant.

Equal Credit Opportunity Act - federal and state laws that prohibit discrimination in the granting of credit based on race, color, religion, national origin, sex, marital status, age, or whether a person is receiving public assistance or alimony.

Escrow Account - money collected in advance by the lender, usually on a monthly basis, for the payment of real estate taxes, betterments and/or insurance.

Fixed Rate Mortgage - a conventional mortgage loan with a set interest rate and equal monthly payments for the entire term of the loan.

Lender - the entity or person, sometimes referred to as the mortgagee, who offers the mortgage loan.

Lien - a legal claim, granted by contract or by a court, against property. A mortgage is one kind of lien.

Loan-to-Value Ratio - The percentage comparison between the unpaid principal balance of the mortgage and the sales price or the appraised value of the property, whichever is lower.

Mortgage - a **lien** placed by the lender on the borrower's property to secure payment of a mortgage loan and removed when the **note** has been paid in full. If the borrower defaults on the note, the lender can sell the property to satisfy the debt.

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Mortgage Review Board - a regional board consisting of an equal number of lenders and community representatives who will review the residential mortgage loans denied by lenders where the applicants believe the denial was based on the location of the property.

Note - the borrower's legally binding written promise to repay a debt to a lender on a specified date.

Point - an often non-refundable sum of money, equal to 1% of the principal amount of a mortgage, charged by the lender to cover certain costs of making a loan. The number of points that may be charged must be disclosed to the borrower in writing prior to closing.

Private Mortgage Insurance - protection for lenders against borrower default. Paid for by the borrower and usually required when the down payment is less than 20% of the purchase price.

Rate-Lock Agreement/Interest Rate Commitment - a written agreement by which a lender will hold an interest rate on a mortgage for a specified period of time. The terms and conditions of a rate lock agreement vary from lender to lender.

(RESPA) Real Estate Settlement Procedures Act - a federal law that requires a good faith estimate of closing costs to be given to a consumer on certain first mortgages and a settlement statement to be provided at the closing itemizing all costs to the borrower in connection with the mortgage loan. For further information refer to the booklet entitled "Settlement Costs."

Right of Rescission - state and federal laws that allow consumers who refinance first mortgages and certain second mortgages to cancel their contract and receive a refund of all fees if the mortgage or security interest is granted on the consumer's principal residence. This must take place within three business days following the closing, or following the delivery of the required information and rescission forms and disclosures, whichever occurs last.

Secondary Mortgage Market - investors who purchase residential mortgages originated by lenders.

Title Insurance - protection against loss due to defects in the title that were not uncovered in the title search and not listed in the title report. Both the lender and the borrower may purchase title insurance to protect their own interests.

Title Search - an examination of legal records to check the validity and completeness of the title to the property. The title search should uncover any liens, overdue assessments or other claims against the property.

Truth-in-Lending - federal and state laws that require lenders to provide borrowers with full disclosure of the true cost of a loan and easy-to-understand information about the **annual percentage rate** and terms of the loan.

Urea Formaldehyde Foam Insulation (UFFI) Notice - a state law requiring a borrower or seller to disclose to a lender the absence or presence of UFFI and the formaldehyde level in a dwelling. A UFFI Certificate is signed at the closing.

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UNIFORM MORTGAGE LOAN COST WORKSHEET

CLOSING AND SETTLEMENT COSTS MAY VARY AMONG MORTGAGE LENDERS
YOU MAY WISH TO COMPARE THESE CHARGES IN CONSIDERING THE TOTAL
COST OF YOUR MORTGAGE

FEE	EXAMPLE		LOAN #1	LOAN #2
Application Fee				
Origination Fee (Points)		= Loan Amount X .01 X (Number of Points) =		
Appraisal Fee				
Credit Report				
Title Insurance: Lender's Coverage		= Loan Amount X <u>[Estimated Rate]</u> =		
Abstract or Title Search				
Title Examination				
Documentation Preparation				
Attorney's Fees				
Private Mortgage Insurance (PMI)	XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX	If 5% down payment: Loan amount X <u>[Estimated PMI Rate]</u> or If 10% down payment: Loan Amount X <u>[Estimated PMI Rate]</u>		
Recording/Transfer Fees				
Survey or Plot Plan				
SUBTOTAL ESTIMATED \$ CLOSING COSTS		SUBTOTAL ESTIMATED CLOSING COSTS	\$	

OTHER POTENTIAL CLOSING COSTS

There may be additional substantial charges payable	Real Estate Taxes		
at closing such as deposits in escrow for real estate	Property Insurance		
taxes and insurance and prepaid interest which	Interest paid in advance		
could range from 0 to 30 times the daily rate, depending on the date of closing. Inquire as to the	Owners Title Insurance Coverage		
amounts of these items.	Other Charges		
	TOTAL ESTIMATED CLOSING COSTS \$		

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*Example based on \$100,000 fixed rate loan with a 20% down payment and a sales price of \$125,000.

